
BEFORE THE TENNESSEE STATE BOARD OF EDUCATION

IN RE:
Omni Prep Academy – Lower School
Charter Revocation Appeal

State Board of Education Meeting
May 27, 2016

**FINDINGS AND RECOMMENDATION REPORT OF THE
EXECUTIVE DIRECTOR TO THE STATE BOARD OF EDUCATION
OMNI PREP ACADEMY – LOWER SCHOOL**

On April 26, 2016, the chartering authority, Shelby County Board of Education (“SCS”), a local education agency, voted to revoke the charter for Omni Prep Academy – Lower School (“OPA Lower”), a charter school sponsored by Omni Schools, Inc. (“Sponsor”). SCS revoked the charter for the following reason: OPA Lower’s failure to meet minimum performance requirements set forth in its charter agreement constituted a material violation of the charter agreement.¹

Pursuant to Tenn. Code Ann. (T.C.A.) § 49-13-122, charter school sponsors may appeal the revocation of their charter agreement by a local education agency (LEA) to the State Board of Education (“State Board”). OPA Lower appealed the revocation of its charter by SCS to the State Board on May 2, 2016.

Based on the following procedural history and findings of fact, I believe that OPA Lower committed a material violation of the conditions, standards, or procedures set forth in the charter agreement.² Therefore, I recommend that the State Board affirm the decision of SCS.

STANDARD OF REVIEW

In order to overturn an LEA’s decision to revoke a charter agreement, the State Board must find that such decision was contrary to the Tennessee Public Charter Schools Act, § 49-13- 122.³ Under T.C.A. § 49-13-122 (c), a chartering authority may revoke or deny renewal of a public charter school agreement if the chartering authority determines that the school did any of the following: “(1) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter agreement; (2) Failed to meet generally accepted standards of fiscal management; or (3) Performed any of the acts that are

¹SCS also revoked the charter of OPA Lower because, per TCA § 49-13-108(b), “the ‘substantial negative fiscal impact’ to the District in maintaining such low-performing charters is contrary to the best interest of students.” However, the State Board does not consider this reasoning when determining whether to affirm or overturn an LEA’s revocation decision because it is not one of the reasons that a chartering authority can revoke a charter agreement under T.C.A. § 49-13-122.

² T.C.A. § 49-13-122.

³ Tennessee State Board Policy 6.110

conditions for nonapproval of the charter school under § 49-13-108(c).” Pursuant to that code section and State Board Policy 6.110, the executive director of the State Board and other members of the State Board staff will conduct a de novo, on the record review of the revocation decision, taking into account the information submitted by the charter school and chartering authority, the public hearing, and any additional information gathered at the discretion of the State Board staff. Based on this information, the executive director will provide a recommendation to the State Board.

PROCEDURAL HISTORY

1. SCS voted to revoke the charter of OPA Lower on April 26, 2016.
2. The State Board received OPA Lower’s appeal on May 2, 2016.
3. On May 4, 2016, State Board staff requested additional information from SCS and OPA Lower.
4. On May 10, 2016 (OPA Lower) and May 11, 2016 (SCS), the parties provided information including the following:
 - a) Documentation of the LEA’s Revocation Decision;
 - b) Copies of the approved charter school application;
 - c) Timeline of the approval of the original charter application and the revocation decision;
 - d) Copies of all correspondence from the LEA to the governing board regarding the status of the charter school including notices of good standing, compliance or non-compliance with the charter agreement, policy, or statute, and any plans of corrections required by the LEA of the governing board;
 - e) Any evidence supporting or refuting the LEA’s reasons for revocation;
 - f) A list of the grade levels being served and the final Average Daily Membership counts for each year the school has been in operation;
 - g) Copies of all reports, including any annual reports, site visit reports, and five-year interim reports, from LEA to governing board on the performance status of the charter school;
 - h) Copies of all annual progress reports submitted by the governing board to the LEA and Commissioner of Education in accordance with T.C.A. § 49-13-120; and
 - i) Copies of all annual financial audits submitted by the governing board to the LEA, the Commissioner of Education, and the Comptroller of the Treasury in accordance with T.C.A. § 49-13-127.
5. A public hearing was held on May 18, 2016, at which OPA Lower and SCS had an opportunity to present information and respond to questions. During the public comment portion of the hearing, six individuals spoke in support of OPA Lower, including current students, parents, and employees of the school.
6. The State Board received six non-student written comments regarding the revocation. In addition, hundreds of students submitted comments in support of OPA Lower.

FACTS

I. District Revocation of Charter

On April 26, 2016, SCS voted to revoke the charter of OPA Lower. SCS revoked the charter based on the following:

1. In School Years 2013-2014 and 2014-2015, OPA Lower failed to meet the minimum performance requirement set forth in its charter agreement that 95% of students who have attended OPA Lower for two or more years will achieve a proficient or advanced performance level on the criterion-referenced section of the TCAP in mathematics, reading, and language arts.
2. In School Years 2013-2014 and 2014-2015, OPA Lower failed to meet the minimum performance requirement set forth in its charter agreement that students who attended OPA Lower for two or more years will perform at an achievement level greater than or equal to that of their peers across the state and district in all grades and on all subject tests.
3. In School Years 2013-2014 and 2014-2015, OPA Lower failed to meet the minimum performance requirement set forth in its charter agreement that a matched cohort of second grade students enrolled in OPA Lower for two years will achieve an average score at or above the 60th Normal Curve Equivalent in all areas tested on the Stanford 10.
4. In School Year 2014-2015, OPA Lower failed to meet the minimum performance requirement set forth in its charter agreement that it would maintain an average attendance rate of 94% or higher.
5. In School Years 2013-2014 and 2014-2015, OPA Lower failed to meet the minimum performance requirement set forth in its charter agreement that it would re-enroll 85% of its students overall for reasons other than geographic relocation, transportation, or illness.

II. Public Hearing

Pursuant to T.C.A. § 49-13-122 and State Board Policy 6.110, the Executive Director of the State Board presided over a public hearing in Memphis on May 18, 2016.

A. SCS Arguments

At the hearing, SCS argued that the revocation of OPA Lower's charter was appropriate because OPA Lower failed to meet minimum performance requirements set forth in its charter agreement, which constituted a material violation of the charter agreement. Although there was no signed agreement between the Sponsor and SCS, SCS explained that, pursuant to Tennessee Attorney General Opinion 10-15, if there is no signed agreement, the approved charter school application serves as the agreement.

SCS presented data, which has been included as Exhibit A to this report, evidencing that OPA Lower failed to meeting the following five minimum performance requirements outlined in its charter agreement: (1) 95% of students at OPA Lower who have attended the school for two or more continuous years will achieve a performance level of proficient or advanced on the criterion-referenced section of the TCAP in mathematics, reading, and language arts; (2) OPA Lower students who have attended the school for two or more continuous years will perform at an achievement level that is equal to or greater than the achievement level of their peers across the state and across the district in all grades and on all subject tests; (3) a matched cohort of second grade students who have been enrolled for two continuous years will achieve an average score at or above the 60th Normal Curve Equivalent on the Stanford 10 in all areas tested; (4) OPA Lower will maintain an average attendance rate of 94% or higher; and, (5) OPA Lower will re-enroll 85% of its students overall for reasons other than geographic relocation, transportation, or illness. SCS explained that the failure to meet each of these minimum performance requirements resulted in material violation of the charter agreement.

Next, SCS discussed how OPA Lower had been on notice concerning its poor academic performance since August 2014. SCS presented evidence that OPA Lower was on both the 2015 Priority List (with a percentile rank of 0.9 and a success rate of 16.5%) and the January 2016 list (based on 2014-15 data of the bottom 10% of Tennessee state schools with a percentile rank of 0.7). SCS provided data showing that the combined success rate of Omni Schools, Inc.'s schools in Shelby County, including OPA Lower, is lower than other SCS 3-8 district schools, SCS 3-8 charter schools, and surrounding schools located in the Raleigh area of Memphis. SCS showed, furthermore, that OPA Lower had received an overall TVAAS score of 1 for 2013, 2014, and 2015.

Lastly, SCS provided legal clarification in order to explain its statutory basis for the revocation decision. SCS explained that T.C.A. § 49-13-122(a)(2) states that automatic revocation cannot occur prior to the 2017 Priority List, but that T.C.A. § 49-13-122(a)(3) provides that, "Nothing in this subsection (a) shall prohibit a chartering authority from revoking or denying renewal of a charter agreement of a charter school that fails to meet the minimum performance requirements set forth in the charter agreement." SCS noted that T.C.A. § 49-13-122(g) provides a process for charter school closure, not revocation, and that SCS had begun a process for revocation when OPA Lower was assigned Priority Status in August of 2014.

B. OPA Lower Arguments

In response, OPA Lower argued that SCS had provided no due process and no closure procedure, SCS targeted OPA Lower for closure, and that SCS's hastened timeline for the revocation and closure was contrary to the best interests of students and was in conflict with SCS's internal policies. With regard to lack of due process and a closure procedure, OPA Lower claimed that SCS had no policy for closing charter schools as required by T.C.A. § 49-13-122(g). OPA Lower provided transcripts from SCS Board meetings containing quotes from SCS Board members that OPA Lower argued were acknowledgements that SCS had no process or procedure in place for closing charter schools.

With regard to SCS targeting OPA Lower for closure, OPA Lower claimed that SCS wanted to close OPA Lower for budget reasons, but created criteria to show that OPA Lower had committed material violations of its charter agreement. OPA Lower claimed that SCS used academic performance criteria that was never reviewed or approved by the Board, SCS never notified OPA Lower that it would be held to the terms in its charter application in the absence of a signed agreement, and that SCS had not created a policy or procedure for reviewing the academic performance of charter schools. In response to SCS's data concerning OPA Lower's poor academic performance, OPA Lower stated that its TVAAS score of 4 for grades 3-4 were higher than its TVAAS score of 1 for grades 1-2, which demonstrated that OPA Lower had been providing good academic instruction for grades 3-4. Further, OPA Lower stated that it had been teaching its students using Tennessee Common Core standards, but that the SAT-10 had tested content not included in Common Core. OPA Lower noted that it had created new curriculum and aligned its instruction for TNReady.

With regard to SCS's hastened timeline for revocation and closure, OPA Lower explained that there were 13 calendar days from the superintendent's public announcement of a recommendation to close six charter schools for budget reasons on April 13, 2016, to SCS's Board meeting in which SCS voted to revoke OPA Lower's charter on April 26, 2016. OPA Lower noted that SCS has a policy about closing other, non-charter district schools, and that this policy contains a specific timeline and requires adequate notification for students and parents. OPA Lower asserted that the quick timeline between public announcement and the revocation decision forced SCS to scramble and make hasty decisions without

proper notice to OPA Lower. OPA Lower claimed that SCS had not provided notification of any academic concerns that year aside from a five-year review requested by OPA Lower, and that OPA Lower had submitted reports to SCS, but had received no feedback. OPA Lower noted that it had received a letter from SCS in 2015 stating that the delay of mandatory closure was pushed back to 2017 in order to allow additional time to address any weaknesses, but that SCS never identified any weaknesses for OPA Lower to address. OPA Lower maintained that the swift decision led to inadequate notification and lack of a specific timeline for the revocation decision, which is contrary to the best interests of students and in conflict with SCS internal policies.

III. Public Comments

Six individuals, including three Omni Schools' students, commented at the public hearing. All those who gave oral comments did so on behalf of Omni Schools, asking the State Board to overturn SCS's revocation decision so the students could remain at OPA Lower. Some asserted that OPA Lower could make more adjustments in an effort to remove itself from the Priority Schools List. The State Board received six non-student written comments regarding the revocation. In addition to the non-student comments, hundreds of students submitted comments in support of OPA Lower.

ANALYSIS

In order to overturn an LEA's decision to revoke a charter agreement, the State Board must find that such decision was contrary to the Tennessee Public Charter Schools Act, § 49-13-122.⁴ As stated above, T.C.A. § 49-13-122 allows a chartering authority to revoke a charter agreement if it determines that the school:

1. Committed a material violation of any of the conditions, standards, or procedures set forth in the charter agreement;
2. Failed to meet generally accepted standards of fiscal management; or
3. Performed any of the acts that are conditions for non-approval of the charter school under § 49-13-108(c).

Therefore, the sole consideration for the Board is whether any of the three statutory reasons for revocation exist in this case.⁵ Here, SCS revoked the charter agreement with OPA Lower because they believe OPA Lower committed material violation of the conditions, standards, or procedures set forth in the charter agreement. Specifically, SCS asserts that OPA Lower violated the performance standards contained in its charter agreement.

To begin, it is important to note that SCS and OPA Lower did not have a separate charter contract in place with SCS. As noted in Tennessee Attorney General Opinion No. 10-45, if the chartering authority grants approval to the charter school's sponsor, the charter application becomes the charter agreement.⁶ Thus, the charter application of OPA Lower became the charter agreement between OPA Lower and SCS. SCS revoked the school's charter because OPA Lower failed to meet the following minimum performance

⁴ Tennessee State Board Policy 6.110.

⁵ In its appeal, OPA Lower raised the issues of a lack of closure procedure and selective enforcement; however, those issues are not properly before the State Board for consideration.

⁶ Tenn. Op. Atty. Gen. No. 10-45 (Tenn. A.G.), 2010 WL 1495645 (citing Tenn. Code Ann. §§ 49-13-104(1); 49-13-106(b)(1)(B); 49-13-108(1); and 49-13-110(a)).

requirements for itself as set forth in the agreement: (1) 95% of students at OPA Lower who have attended the school for two or more continuous years will achieve a performance level of proficient or advanced on the criterion-referenced section of the TCAP in mathematics, reading, and language arts; (2) OPA Lower students who have attended the school for two or more continuous years will perform at an achievement level that is equal to or greater than the achievement level of their peers across the state and across the district in all grades and on all subject tests; (3) a matched cohort of second grade students who have been enrolled for two continuous years will achieve an average score at or above the 60th Normal Curve Equivalent on the Stanford 10 in all areas tested; (4) OPA Lower will maintain an average attendance rate of 94% or higher⁷; and (5) OPA Lower will re-enroll 85% of its students overall for reasons other than geographic relocation, transportation, or illness. The performance data provided by SCS and attached to this report as Exhibit A shows that OPA Lower extremely underperformed against these stated goals.

In August 2014, the state designated OPA Lower as a Priority School based on the school's prior year academic performance. In 2015, OPA Lower remained a Priority School and did not move into the Priority Improving or Priority Exit status by demonstrating sufficient growth in achievement in 2014-15. On the contrary, in January 2016 OPA Lower remained in the bottom 10% of schools statewide. Moreover, OPA Lower placed in the 0.9 and 0.7 percentile of schools in 2015 and 2016 respectively. Thus, it is clear that OPA Lower has had a continued pattern of significant underperformance towards its achievement goals.

The decision to revoke a charter agreement is extremely emotional for all involved and affected by the revocation and proceeding closure. Through the hearing and public comments, it was evident that OPA Lower staff, students, parents, and other stakeholders have an attachment to OPA Lower and a vested interest in keeping its doors open. Conversely, SCS also has a responsibility to act dutifully as a quality charter authorizer and "revoke a charter during the charter term if there is clear evidence of extreme underperformance or violation of law or the public trust that imperils students or public funds."⁸ As such, the autonomy afforded to charter schools is at times a tough, but critical, bargain.

The charter school contract is the embodiment of the autonomy-for-accountability bargain and the commitments of both parties. The authorizer commits to entrusting public dollars and public school students to the independent governing board of the school. It also commits to giving the governing board more flexibility in how it operates the school than is afforded traditional public schools. In return, the school's governing board commits to handling the funds responsibly, complying with its legal obligations, and educating students well.⁹

⁷ OPA Lower School met this performance standard with attendance rates of 96.3% for the 2013-14 school year and 93.9% for the 2014-15 school year. Accordingly, they have not materially violated the agreements based on this goal.

⁸ Principles & Standards for Quality Charter School Authorizing, 2015 Edition, National Association of Charter School Authorizing, Page 20, available at http://www.qualitycharters.org/wp-content/uploads/2015/08/Principles-and-Standards_2015-Edition.pdf

⁹ Haft, William, "The Terms of the Deal: A Quality Charter School Contract Defined," National Association of Charter School Authorizers, February 2009, page 1, available at http://www.qualitycharters.org/wp-content/uploads/2015/11/IssueBrief_TheTermsOfTheDeal_2009.02.pdf

In this case, it is clear that OPA Lower has not fulfilled its part of the autonomy-for-accountability bargain. The record shows that OPA Lower consistently failed to meet its performance standards and thus has committed material violation of conditions and/or standards set forth in the charter agreement.

Similarly, SCS did not adequately fulfill its duties under the autonomy-for-accountability bargain, and as an authorizer, has significant room to improve its practices for transparency, performance evaluation, and timely notification. In sum, a quality authorizer:

1. Has clearly established performance frameworks by which charter schools are held accountable and annually communicates with a charter school about its performance against goals.
2. Releases an annual report on the charter school to provide students, families, stakeholders, and the public with important information about a school's growth and achievement, among other success factors; and,
3. Has an intervention policy in place to notify schools of performance, operational, or financial issues in a timely way, and where applicable, provides a timeline and expectations for remedying the issue(s) prior to a revocation decision.

Moreover, while legally permissible, SCS's communication and notification regarding the revocation of OPA Lower's charter agreement, particularly the timing of the decision, is troubling. The extremely short notice of the revocation decision and the significantly late timing of the revocation in the academic year negatively impacts the transition of affected students and places an undue burden on families surrounding school choices for the upcoming year. Ultimately, the way the revocation decision was made and communicated to the OPA Lower, its students, parents, and stakeholders does not embody the actions of a quality authorizer.

Considering the disruption to the placements of students and families, SCS must be extremely conscientious and intentional in its efforts to comply with the provisions of T.C.A. § 49-13-122(g). Specifically, SCS shall communicate within thirty (30) days to the families of students enrolled in the school all other public school options for which the student is eligible to enroll. Pursuant to T.C.A. § 49-13-123, if a charter agreement is terminated in accordance with § 49-13-122, "a pupil who attended the school, siblings of the pupil, or another pupil who resides in the same place as the pupil may enroll in the resident district or may submit an application to a nonresident district according to § 49-6-3105 at any time. Applications and notices required by this section shall be processed and approved in a prompt manner." Moreover, SCS shall "communicate regularly and effectively with the families of students enrolled in the school, as well as with school staff and other stakeholders, to keep the families, staff and other stakeholders apprised of key information regarding the school's closing."¹⁰ Given the timing of this revocation decision, the burden is on SCS to ensure each student and family affected is afforded excellent communication and support in creating a smooth transition for the coming 2016-17 school year.

In closing, the revocation of a charter agreement is a serious and impactful decision, and one that all involved should contemplate with great care. As an appellate authorizer, the State Board of Education continues to be focused on quality school choices for all students across our state. Allowing low-performing charter schools to remain open is a disservice to the students it serves, and to the charter community as a whole, in terms of ensuring the health and quality of the charter sector. Furthermore, as a state, we owe all students the opportunity to attend a high-quality school that will prepare them for a

¹⁰ T.C.A. § 49-13-122(g)

successful future. As the record shows, OPA Lower continually failed to meet the most minimal of performance standards as illustrated by its status on the 2014 and 2015 Priority Lists, and thus is in violation of its charter agreement with SCS.

CONCLUSION

Accordingly, my recommendation is that the State Board uphold SCS’s revocation of OPA Lower’s charter.



Dr. Sara Heyburn, Executive Director
State Board of Education

5/25/2016

Date

EXHIBITS

- **Exhibit A: Shelby County Schools - Charter School Minimum Performance Requirements for Omni Prep Academy – Lower School**



THE OFFICE OF PLANNING AND ACCOUNTABILITY

160 S. Hollywood • Memphis, Tennessee 38112 • (901) 416-5533 • www.scsk12.org

**Omni Prep Academy Lower School
Failure to Meet Minimum Performance Requirements of Charter Agreement**

Minimum Performance Requirement	13-14 Results	14-15 Results	Data Sources & Notes																																																																																																																
<p>I.B. 95% of students at OPA-SPLS who have attended the school for two or more continuous years will achieve a performance level of Proficient or Advanced on the criterion-referenced section of the TCAP in mathematics, reading and language arts.</p>	<p>(% Proficient/Advanced) Math: 10.2% RLA: 10.2%</p>	<p>(% Proficient/Advanced) Math: 22.7% RLA: 13.6%</p>	<ul style="list-style-type: none"> • Student Master Active files 2012-13 & 2013-14 • Accountability Student Level data file 2014 • Accountability Student Level data file 2015 																																																																																																																
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		State	N/A																																																																																																																
3	Math	OPL	33.3%																																																																																																																
		District	47.9%																																																																																																																
		State	61.7%																																																																																																																
3	RLA	OPL	20.0%																																																																																																																
		District	32.2%																																																																																																																
		State	43.0%																																																																																																																
3	Science	OPL	16.7%																																																																																																																

			District	58.3%			District	54.5%	<ul style="list-style-type: none"> Accountability District Base File 2015 TCAP 2014-15 State Results Multi-Year PDF 	
			State	67.6%			State	68.0%		
	3	Soc Std	OPL	41.1%		4	Math	OPL		13.8%
			District	77.1%				District		37.1%
			State	N/A				State		50.4%
	4	Math	OPL	10.0%		4	RLA	OPL		8.3%
			District	39.1%				District		31.1%
			State	48.3%				State		44.8%
	4	RLA	OPL	15.0%		4	Science	OPL		2.8%
			District	40.7%				District		41.9%
			State	48.7%				State		55.5%
	4	Science	OPL	15.0%						
			District	44.9%						
			State	56.7%						
	4	Soc Std	OPL	55.0%						
			District	78.4%						
			State	N/A						
I.D. A matched cohort of second grade students who have been enrolled for two continuous years will achieve an average score at or above the 60 th Normal Curve Equivalent (NCE) on the Stanford 10 in all areas tested.	(Average NCE) Total Math: 28.94 Total Reading: 34.86				(Average NCE) Total Math: 34.92 Total Reading: 26.55				<ul style="list-style-type: none"> Student Master files 2012-13, 2013-14, 2014-15 Unified SCS SAT10 Spring 2014 Grade 2 SCS SAT10 Spring 2015 Grade 2 	
II.F. OPA-SPLS will maintain an average attendance rate of 94% or higher.	(Average Daily Attendance) 96.3%				(Average Daily Attendance) 93.9%				<ul style="list-style-type: none"> State Report Card 	
II.G. OPA-SPLS will re-enroll 85% of its students overall for reasons other than geographic relocation, transportation or illness.	(Re-Enrollment Rate) 71.6%				(Re-Enrollment Rate) 65.6%				<ul style="list-style-type: none"> Student Master files 2012-13, 2013-14, 2014-15 	